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October 5, 2021

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Subject: Scheduling Guidance for Type I - III Administrative Appeals: APL21-007 (Reference Permit # SUB21-003)

Dear Principal Parties:

I write in my capacity as the City of Mercer Island Hearing Examiner (“Examiner”).

On October 4, 2021, I received the appeal which Mr. Rosencrantz filed on October 1, 2021, on behalf of the Niedermans with the City of Mercer Island *in re* the approval of SUB21-003, apparently a lot line revision,

by the City's Community Planning & Development Department. The Yangs were the applicants for SUB21-003. For the purposes of this letter I have assumed that the parties will be represented by the same counsel who represented them in the recent Yang v. Fire Marshal appeal (APL21-006). If that assumption is not correct, please so advise me when you respond to this scheduling letter and I will adjust titling and my e-mail distribution list accordingly.

Decisions made on lot line revision applications are Type II land use actions which are subject to the right of administrative appeal to the Examiner. [MICC 19.15.030(E), Tables A and B]

The MICC provides for a 14 calendar day appeal period from date of issuance of the decision being appealed. [MICC 19.15.130(B)] The content requirements for Type I - III appeals are set forth in MICC 19.15.130(D). I have not as yet been provided with a copy of the decision that is under appeal. Therefore, I cannot at this time make any comment on the timeliness of the appeal.

Because of restrictions attendant to the current COVID-19 pandemic, all proceedings in the foreseeable future in this appeal will have to be conducted remotely. Mercer Island uses the "Zoom" platform for its remote proceedings.

The MICC contains basic regulations for Type I - III appeals and the open record hearings associated therewith [MICC 19.15.130]. Those regulations refer to rules that may be adopted by the Hearing Examiner. [MICC 19.15.130(G)] I promulgated Rules of Procedure ("RoP") on December 2, 2019, pursuant to MICC 3.40.080(B). Please note that the current RoP are different from those of my predecessor. I have more recently promulgated an Emergency Rule addressing electronic filing of documents. (I have attached a copy of both the new RoP and the Emergency Rule to the e-mail version of this letter. The City also maintains copies of the RoP which it can provide to appellants.)

Subsection 19.15.130(F) MICC requires the City to give notice of the open record appeal hearing not less than 30 days before the open record hearing in the manner required by MICC 19.15.100. To ensure fairness to all principal parties, I set the hearing date in consultation with the principal parties; the City issues the required hearing notices. RoP 224 requires a pre-hearing document pre-filing process in appeal cases. The pre-filing process starts not less than 14 days before the hearing date. RoP 225 provides a shortened version of the RoP 224 process. I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings. I will determine which pre-filing process to use later.

The RoP provide for prehearing conferences. [RoP 208] The Examiner has sole discretion to convene prehearing conferences. [RoP 208(a)] Any principal party may request that the Examiner convene a prehearing conference; the Examiner may call for a prehearing conference on his own initiative. [RoP 208(c)] **At this time I do not believe that a prehearing conference is necessary in this appeal.** However, I will fairly consider any request for a prehearing conference. Unless waived by the principal parties, I am required to give not less than seven days notice of a prehearing conference. [RoP 208(c)]

Allowing the parties until October 14, 2021, to advise me of their date preferences¹ and five work days after that for the City to prepare and issue the required hearing notices, the earliest that we could convene the hearing will be November 18, 2021. **I am presently available on November 19 and 29; and on December 1, 2, 3, 6, 7, 8, 9, and 10.**² (I schedule hearings on a first-come-first-served basis, so the longer it takes us to choose a date, the greater the likelihood that another jurisdiction may have reserved my services. Time is of the essence.)

Please communicate your availability and date preference(s) directly to me by E-mail by October 14, 2021, at the latest. My E-mail address is “jegalt755@gmail.com”. The City’s response must consider the availability of needed staff. I will select a date and time based upon timely received responses.

Please be aware that *ex parte* communication with me is strictly limited. (See RoP 120.) You may communicate with me only on scheduling or other procedural matters. Whenever you communicate with me on such matters, you must cross-copy your communication to all other parties.

Last but by no means least, two procedural items: 1) If you are willing to continue to accept e-mail service from me in this case, please so advise when you communicate your date preferences; and 2) If you have key associates or assistants that I should include in e-mail service to you, please provide their names and e-mail addresses in your e-mail.

Sincerely,

\s\ *John E. Galt*

John E. Galt
City of Mercer Island Hearing Examiner

¹ I will be on leave from tomorrow through October 13th, so an earlier response date would accomplish nothing.

² The City is currently working to set a hearing date for a pre-decision, open record hearing on an unrelated matter for December 1, 2, or 3. I trust that City staff will not allow these two hearings to overlap or conflict.